IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.959 OF 2005
WITH
CIVIL APPLICATION NO.1126 OF 2005

Mrs.Narsin H. Baig. ...Appellant.
Vs.
Municipal Corporation for Greater Mumbai. ...Respondent.
....
Mr. Atul A.Damle for the Appellant.
Mrs.Geeta Joglekar for the Respondent.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

P.C.:

Admit. Respondent waives service. By consent taken up for hearing and final disposal.

By the impugned order dated 26th September 2005, the City Civil Court has declined to grant ad-interim relief. A notice has been issued to the Appellant who is the owner of two shops at Crystal Apartments, Juhu Road, Santacruz (West), Mumbai. The notice dated 11th May 2005 alleges that there is an unauthorised construction of a mezzanine floor, admeasuring 25' x 21'.6". The

Appellant submitted a representation dated 14th May 2005. The Assistant Municipal Commissioner did not accept the submission of the Appellant and an order was passed holding that though permission has been granted to the Appellant for the construction of a loft, the construction in question is of a mezzanine floor. The Appellant has relied upon the permission dated 28th July 2000 issued by AEB&F, H/W informing the Appellant that there was no objection to provide a loft admeasuring 21' x 18'.6". The Appellant has submitted a representation dated 14th May 2005 to the Assistant Municipal Commissioner pointing out that the sanctioned plan was not available to the Appellant when the earlier reply was transmitted. However, a copy of the sanctioned plan which according to the Appellant, shows the approval for the loft, has been forwarded to the A. M. C.

After an order of ad-interim relief was refused by the Learned Trial Judge, this Court by an order dated 25th October 2005 noted the statement of the Appellant that an application has been made to the Municipal authorities for regularising the construction of the loft and that the sanctioned plan which had now been made available to the Appellant showed that a loft had

already been sanctioned. Prima facie it is clear that the Municipal Corporation had permitted the Appellant to provide a loft of the dimension of 21' x 18'.6" on 28th July 2000. A copy of that communication is annexed at Exh.D to the Plaint. The provisions respectively for a loft and mezzanine floor are made in Regulation 38 of the D.C. Regulations of Greater Mumbai, 1991. Counsel appearing on behalf of the Appellant has stated before the Court that the Appellant is ready and willing to have the premises inspected by the competent officer of the Municipal Corporation and the Appellant would restore the premises to the dimensions which are permitted in the sanctioned plan. In view of the aforesaid statement, it would be appropriate to direct that the Assistant Municipal Commissioner shall dispose of the representation of the Appellant and shall verify as to whether the structure which is in existence is in compliance with the sanctioned plan. It would be open to the A. M. C. also to consider whether in the event that there is any variation between the sanctioned plan and the dimensions of the structure on the site, permission should be granted to the Appellant to carry out such rectification as will bring the structure in conformity with the sanctioned plan. The Appellant has stated through Counsel that he is ready and willing

to ensure that the sanctioned plan is observed by bringing the structure to the dimensions permitted in the sanctioned plan. In order to facilitate this exercise being carried out, the impugned order dated 26th September 2005 is quashed and set aside. Since the A.M. C. has been directed to consider the representation dated 4th October 2005 of the Appellant (Exh.A to the Civil Application), there shall be a direction to the effect that the earlier order of the A. M. C. dated 14th September 2005 (page 46 of the Paper-book) shall not be enforced for a period of four weeks until the representation of the applicant is disposed of by a reasoned order. In the event that the representation of the Appellant is not allowed and the earlier order is maintained, the A. M. C. shall not take further steps for a period of two weeks from the date of the communication of the order so as to enable the Appellant to move the City Civil Court. The appeal is accordingly disposed of.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

....